1951 **File No.** O. Tenancy/51
Pt. III

Legal Deptt
A **BRANCH**

Subject:— Opinions under the Bombay Tenancy and Agricultural Lands Act, 1948

(For previous pps. pl. see Pt. I & II)

P. 58 E

File No. O. Tenancy/51
Pt. III

Gen. 194 e.

14-A

C O N T E N T S.

Legal Department File No. C. Tenancy /51 Pt III.

Sr.No.	R.I./O.No.	Subject	Pages.
		Bombay Tenancy and Agricultural Lands Act, 1948.	
1.	- 14446 11-9-51	Whether in view of the inability of the owner to cultivate the land it is not a fit case for Govt. to interfere.	1-2
2.	- 15895 9-10-51	Sakkari Inam - Whether Govt. has any power to resume	3-4
3.	20027 27-9-51 17073 26-10-51	Sec. 63 -Whether the lease of the land to Shri Deshpande is invalid for want of title of the lessees.	5-8
4.	16491 8-8-51 15897 6-10-51	Sec. 84 -Possession granted by the Court - Whether unauthorised	9-12
5.	- 15997 6-10-51	Sec. 88(1)(a) -Whether the Manager should be asked to transfer to the Thakare for his [illegible] Gharkhed suitable lands measuring 75 areas	13-16
6.	- 16503 18-10-51	Secs. 12(3) and 86 -Whether it would be competent for Govt. to revere the order of the Prant Officer	17-18
7.	- 17116 26-10-51	Secs 74 and 82(2) (c) Mahalkarna -Appeal memos signed and presented by Pleaders.	19-22
8.	- 16991 17-10-51	Secs. 65(1), 83 & 86- Revision of ultra vires orders.	23-24
9.	- 17294 2-11-51	Secs. 14 & 81(1) refund of local fund case.	25-26
10.	7579 14-5-51	Statement of the case to the Advocate General re: Section 89(3) -Applications under sub-section (1) of sec. 7 of the repealed Act and those under sub-sec. (5) -Distinction between.	27-36
11.	Adv. General's Opinion No. 7579/14-5-51		
	- 15165 22-9-51	----------do----------	37-42

S.A.K.
30-7
copies

12.	-	17633 7-11-51	Whether the transfer made by Krishtacharya in favour of the Pancherw is valid under sec. 83.	43-44
13.	-	17810 9-11-51	Sec. 44- Ankhindra Village -Whether it would be feasible to assume management of the Estate	45-46
14.	23093 9-11-51	18159 15-11-51	Secs. 74 & 74-A- Whether it is competent for the Collr. to withdraw appeals from the files of his Assistant	Collr. 47-50
15.	-	18235 16-11-51	Sec. 2(16) -Expressions "Aval Karkun" and "Extra Aval Karkun" -Whether Head Taluka Aval Karkuns would be covered.	51-52
16.	-	18342 17-11-51	Secs. 44 and 65(1) R.L.A.'s opinions nos. 10230/20-7-50 and 159/7/8-10-51	53-54
17.	-	18743 22-11-51	Sec. 84 -servant ~~turning~~ turning trespasser	55-56
18.	-	18626 21-11-51	Sec. 49 -Claims against the Estate Holder -whether it would be competent for the Manager to revise his order.	59-62
19.	-	18797 23-11-51	Sec. 49 -Claims against	
18.	-	18628 21-11-51	Sec. 23 what meaning should be ascribed to the term "bund" appearing in -	57-58
19.	-	18797 23-11-51	Sec. 49 -Claims against the state Holder whether it would be competent for the manager to revise his order.	59-62.
20.	23883 29-11-51	18996 27-11-51	Sec. 44 - Whether there would be any legal objection to the release of the forest areas from management.	63-66
21.		19291 1-12-51	Sec. 28- What should be the form in which the orders of Govt. passed under sec. 28 should be drawn and communicated to the parties.	67-68
22.		19227 30-11-51	Secs. [illegible] and 4(1) Whether it is competent for Govt. to fix a newer rate of the maximum rent with retrospective effect.	69-79

2 .	23544 15-11-51	19162 3-12-51	Sec. 28 -Vahivati suit	71-74
29.	24259 23-10-51	19484 4-12-52	Sec. 72- whether Mam-latdar acting under the Act Constitutes a Court Adst. Secy's opinion No. 2026 dt. 9-2-52.	75-78
25	23408 13-11-51	19533 5-12-51	Secs. 63 & 64 - what is a way set to safeguard the interest of the Bank vis-a-vis the debtor under the award	79-82
26	-	19797 10-12-51	Sec. 65 - assumption of management of the land under	83-84
27	23647 6-11-51	19873 11-12-51	Sec. 32 Whether the right given under - can be exercized by a protected tenant .	85-88
28	-	19898 11-12-51	Bilimoras Municipality Whether it is an necessary to take the permission of the Collector for purchasing the agricultural land under Rule 2".	89-92
29.	25088 5-12-51	20164 15-12-51	Secs. 44, 46(b) & 47 Formali village of sale during Govt. Management.	93- 6
30	-	16983 27-11-51	Whether the Act ceased to have effect from 1-1-50 under sec. 5 of Hom. Merged States (Laws) Ordinance, 1949.	97-100
31	23409 1-11-51	20667 6-12-51	Secs. 6(1) & (2) -Bom. Tenancy Rules -Rule 3 whether it would necessary to determine and publish the total yield wherein the lower limit of maximum rent has been fixed.	201-104
32.		20369 27-12-51	Sec. 14(1) /Addl. Secy's Opinion No. 5307/13-6-51 For advice as to the time limit for give notice and whether should be oral or in writing .	105-106

S.A.K.
30-7.
5 copies

Office of the R.L.A.

It is true that under section 65(1) of the Bombay Tenancy & Agricultural Lands Act, 1948 the Prant Officer took possession of the land on the ground that the owner had allowed the land to remain fallow for two consecutive years. But the land thus taken possession of for management vested in Government under section 65(2) and, as held by the Bombay Revenue Tribunal in the revision application, previsions of section 88(1)(a) will apply to the land, and consequently, the other previsions of the Act relating to the lease would not apply. It was not, therefore, obligatory on the Mamlatdar Manager to lease the land for a period of not less than ten years under section 5(1). It was also competent for the Prant Officer to rescind the order of assumption of management of the land if he found it unjustifiable or inequitable or illegal. He had rescinded the order but the Collector directed that the lessee should be continued on the land for one year in view of the expenses he had incurred in xxkx reclaiming the land. The owner however, offered to reimburse the le see the expenses he had incurred in so repairing the land. The Collector therefore modified his order and directed the restoration of the land to the owner on his paying to the Lessee Rs. 417 which was spent by him on reclamation ofthe land. The R.R.T. xxxxxxx has declined to interfere with that or or for reasons stated above. Having regard to the circumstances of this case, namely , the inability of the owner to cultivate the land owing to the death of his bullocks; & illness of his son and his offer to pay the cost of reclamation to the lessee, it is not a fit case for Government to interfere. The e equities in are all in favour of the owner. If the lessee desires to enforce his right to & be on the land for the period of the lease he may, if so advised, go to Court.

Sd/-J.B.Dhurandhar.
8-9

Remembrancer of Legal Affairs.

U.O. to R.D.No. 14446, dated the 11th September 1951.
S.A.K./2777

Office of the [illegible]

Walkari Inam
Ren. Tenancy and
Agricultural
Land Act. 1948
Application to p

The view taken by Revenue Department is correct. Government has no power to resume the land given for Walkari service in Khandesh, the Deccan and the Southern Maratha Country (Bombay Vol. I of 0.25 M.L.R. 1160). The provisions of the Bombay Tenancy and Agricultural Lands Act will [illegible] to the land in dispute.

Sd/-J. Dharmadhikari.
5-10

Remembrancer of Legal Affairs.

[illegible] to Letter No. 1[illegible]8 dated the 9th October 195[illegible].

M.A.S.
2/7
4 de ion

Submitted.

2. The facts of the case are briefly as follows.

One Purushottam Govind Khadekar purchased S.No. 25 of Gorane Tal. Shindkhede in June 1943 from the Original occupants M/s Ramdas Vasudeo Khedekar and others and again retransferred the S.No. to them in the month of June 1949. (vide affidavit of Shri P.G.Khedekar before the Presidency Magistrate, Esplanade Court dated 9-8-1950). One Shri Bhila Radu Patil was the tenant in respect of that S.No. since 1941-42 to 1944-45 and thereafter that land has been lying fallow. As the land remained fallow for two years preceddings for assumption of the land for management under section 65 were taken in 1949. A shew cause notice was issued to Shri P.G.Khedkar at his Bombay address and it was received by him on 23-7-1949. It appear after the receipt of this notice Shri Khedekar requested th V.O's to have effect the changes in the Record of Rights in favour of the transferees Ramdas Vasudeo and others and these transferees by a registered deed dated the 29th October 1949 leased the land to one Shri R.K.Deshpande. The management under section 65 was assumed by the Asstt. Collector by his order dated 9-3-1950. The Mamlatdar who was appointed managar has granted the land on estate lease for the year 1950-51 to Shri Bhila Radu Patil the original tenant. After the land was leased out Shri Kulkarni requested the Collecto. to hand over possession to him as hewas the lawful tenant and as the Collector feundthat the provisions of G.R. R.D. no. 870.49 dated 30-10-49(regarding

service of notice) were not observed in this and he directed restoration and possession to Shri Deshpande. Shri Patil has now made an an application to Government stating that the Order of the Collector dated 3-2-1951 dir-ecting restoration of possession to Shri K. is illegal and has requested for setting it aside and stay order has been granted by Government. The R.D. considers that since the sale by Shri P.G.Khedekar in 1949 was in contravention of section 63, the transferees cannot be recognised as occupants nor would the lessee Deshpande acquire any rights under the lease dated 25-12-1949 and propose to cancel the Collector's order direct restoration of possession to Shri Deshpande. The B.L.A. is requested to advise whether the R.D. view is correct.

S.A.K.
27/7
4 copies

OFFICE OF THE R.L.A.

Bombay Tenancy & Agricultural Lands Act, 1948, sec. 63.

The view taken by [illegible] is correct. The lease of the land to Shri [illegible] is invalid for want of title of the lessors themselves to the land. The Collector's order may therefore be set aside and the said statement restored to [illegible] file.

Sd/- J. [illegible] Purandhar,
26-10

Home Secretary of Legal Affairs.

U.O. No. R.L.A. 1/0743, dated the 26th October 1951.

G.A.D.
27/7
4 copies

R.I.No. 16491 dated 6-9-1951.

Submitted.

2. Please see the letter of the Collector of Godhra dated the 15th July 1951.

In this case under section 32 sub-section (1)(v) read with section 35(3)(iii) of the Bombay Agricultural Debtors Relief Act, 1948 the Court has delivered possession of the agricultural am land involved in the award to the mortgagee-landlord and the tenant in actual possession has been dispossessed. The tenant it appears had moved the Court for restoration of possession but his application was rejected. He has now made an application to the Collector of Godhra for the summary eviction of the landlord under section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948. The Collector has sought instructions on the point whether the possession obtained by the landlord under orders of the Court can be considered as the landlord under orders of the Court can be considered as unauthorized or wrongful within the meaning of section 84 of the latter Act. The R.D. considers that it cannot be so considered and that it is open to the dispossessed tenant to approach the Mamletdar under section 29(2) of this Act if he considers entitled to possession. The A.L.A. is requested to advice.

S & F.
27/7
4 copies

Legal Department.

Bombay Tenancy & L.A.Act, 1948. Sec. 84 Sem. Agri. Debtors by the Court whether un-authorised.

Seen and returned.
The view taken by the Revenue Department is correct.

Sd/-P.H.Lad

Additional Secretary to Government

U.O. to P.D.No. 15837, dated the 6th October 1951.

S.A.n.
27.7
4 copies

embay Tenancy
gricultural
nds Act.
948
ction 88(1)
a).

4. It appears that the Thakoresaheb of Rama had executed an agreement with Government in terms of the agreement at page 7 ante. Clause 3 of that agreement provided that "The Government of Bombay shall on my request appoint a commission to enquire and report to that Government what lands, if any, should be reserved for my Gharkhed and to suggest a machinery for the summary transfer of possession of the said lands to me. Such enquiry may, if need be, undertaken along with the settlement of the land-revenue payable by me." The Commission appointed by the State Government in accordance with that provision has reported that 95 acres of land would be sufficient for Gharkhed of the Thakore and 75 acres of land should be reserved in that behalf as 20 acres of land already stands in his name. The Commission has suggested that in the absence of any Government waste-land in the Rama Taluka the land should be acquired from the xxx estate of one Vanmaraj Gemaji for the purpose. Revenue Department has ruled out the suggestion of acquisition of the land on the ground that it would not be for a public purpose. It is, however, suggested that as the management of the Rama estate has been assumed under section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948, the Manager is competent to let the Lands to the holder of the Estate and since the estate vests in Government, the provisions of the Bombay Tenancy & Agricultural Lands Act, 1948, would not apply to these state lands in view of section 88(1)(a) and the tenants would not be entitled to 10 year-tenancy or protected tenancy under the Act, and consequently, it is open to the Manager to terminate the existing tenancies if their leases have expired and to transfer the lands to the Thakore for his Gharkhed. Revenue Department has, therefore, proposed that the Manager should be asked to transfer to the Thakore for his Gharkhed suitable lands measuring 75 acres in respect of which the period of lease has expired. The R.L.A. is requested to advise whether this course would be legally in order.

S.A.R./27/7

2. It is true that in the revision application No. 860 of 1950 the Deputy Revenue Tribunal has held that as the land has vested in the Provincial Government during the continuance of management of by reason of the provisions of section 69 of the Bombay Tenancy and Agricultural Lands Act, 1948, and as the applicant hold the land on lease from the crown the provisions as to revision orders of the Collector are inapplicable to such lands by reason of section 88(1)(a) of the Act. The effect of that decision is that the estate taken over for management under Chapter IV of the Bombay Tenancy and Agricultural Lands Act, 1948, vests in Government and as such is not governed by the provisions of that Act. However, correctness of the decision of the Deputy Revenue Tribunal is doubtful. As pointed by the D.L.R. in his opinion No. 10030, dated the 20th July 1950 that when an estate is taken over for management under Chapter IV, the estate does not become an estate of Government but continues to be the estate of the original owner only managed by the Government as trustee. Consequently, the provision of Section 88(1)(c) cannot be invoked and rights of protected tenants of the estate are not affected. The Revenue Department proposal is, therefore, not legally feasible.

Sd/-S.A.Dharmadhikari.
8-10

Demonstrator of Legal Affairs.

U.O. to D.D.No. 15997, dated the 8th October 1951.

S.A.D.
27/7
4 copies

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948.

Sections 12(5) & 86.

It is not possible to afford any relief to the tenant, for under section 12(5) of the Bombay Tenancy and Agricultural Lands Act, 1948, every order passed by the Mamlatdar under this section, if not appealed against, and every order passed by the Collector in appeal shall hold good for a period of five years and shall not be called in question during that period. In other words, the order passed by the Prant Officer in the present case fixing the reasonable rent at Rs. 1, 800/- is final for a period of five years. In Kalu Mavana Patil vs. Secretary of State for India (30 B.L.R. 1404) it was held that the decision of the Collector under section 9(2) of the Hereditary Offices Act, 1874, as to the amount of rent payable is final in the sense that it cannot be questioned either by any appellate or revisional authority under the Act or by any suit in a civil court. It would not, therefore, be competent for Government to revise the order of the Prant Officer in the present case.

Sd/-P.N.Lad

Additional Secretary to Government.

U.R. to R.D.No. 16559, dated the 18th October 1951.

S.A.K.
27/1
4 copies

Vakalatnama Appeal memos signed and presented by Pleaders.

Bom. Tenancy & Agricultural Lands Act. 1948 Section 74 and 82(2)(q).

It appears from the letter of the Collector of Amreli that appeal memos in respect of appeals to the Collector submitted under section 74 of the Bombay Tenancy and Agricultural Lands Act, 1948, are in certain cases signed by pleaders on the strength of the vakalatnama. The question for consideration is whether pleaders can sign the appeal memos. The Revenue Department considers that, in view of rules 130 and 131(1) of the Bombay Land Revenue Rules, there would be no objection to the pleaders signing the appeal applications on the authority of the vakalatnama. The L.A. is requested to advise.

~~to the pleaders signing the appeal applications on the authority~~

2. The Bombay Tenancy and Agricultural Lands Act, 1948, does not prescribe the mode, form and manner in which appeals under section 74 shall be drawn up and presented. Rules in regard to that should have been made by Government under clause (q) of sub-section (2) of section 82 the Act which gives the State Government power to make rules for carrying out the purposes of the Act. The Revenue Department view that rules made under clause (m) of sub-section (2) of section 214 of the Bombay Land Revenue Code shall apply to appeals under the Bombay ~~Xxxxxx~~ Tenancy and Agricultural Lands Act is not correct. Nowhere in the Bombay Tenancy and Agricultural Lands Act a provision that these rules shall apply to appeals under the Act has been made. It is true that under sub-section (2) of section 74 the provisions of Chapter XIII of the Bombay Land Revenue Code have been made applicable to appeals to the Collector under the Act. But Chapter XIII of the Code, apart from the provision in Section 205 does not contain any provisions relating to the mode, form ahy manner of drawing up and presenting of appeals. Because provisions of Chapter XIII of the Code are applied it does not follow that rules made under section 214 for carrying out the purpose of Chapter XIII accordingly apply. In the circumstances, till rules are made by Government under section 82(2)(q) of the Bombay Tenancy

S.A.M.
27/7

Tenancy and Agricultural Lands Act, 1948, prescribing the mode, form and manner in which appeals shall be drawn up and presented, the usual ordinary rule that the appeals shall bear the signature of either the appellant of the his duly authorised against, may be followed. There should, therefore, be no objection till the rules are made by Government to accept memos of appeal signed by the Pleaders on the strength of vakalatnamas. It is advisable that the Government should take steps to frame rules under section 82(2)(e) of the Act for the purpose.

Sd/-P.N.Lad

Additional Secretary to Government.

U.O. to R.D.No. 17116, dated the 26th October 1951.

S.A.K.
27/9
4 copies

Legal Department.

Bombay Tenancy & Agricultural Lands Act 1948. Sec. 65(1), 83 & 86. Revision of ultra vires orders.

It appears that, in exercise of the powers vested in Government under section 83 of the Bombay Tenancy and Agricultural Lands Act, Government's power under section 65 has been delegated to the District Deputy Collectors, Assistant Collectors and Collectors. It would, therefore, follow that in exercising the delegated powers the District Deputy Collectors, Assistant Collectors and Collectors exercise concurrent jurisdiction. For that reasons if an order is passed by an Assistant Collector under section 65(1) such an order cannot be revised by the Collector. Consequently the order passed by the Collector in the present case directing the restoration ~~Collector in the present case directing the restoration~~ of possession to the owner being an order revising the order of the Assistant Collector assuming management of the property under section 65(1) would, therefore, be null and void, having been made without jurisdiction. 'To delegate to another is not to denude yourself. In my opinion the word in its general sense and as generally used does not imply or point to giving up of authority but rather to conferring of authority upon someone else' (per Wills, J. in Huth v. Clarke, 25 Queen's Bench Extn Division 391). Although power of Government under section 65 has been delegated to the Assistant Collectors, District De puty Collectors and Collectors, it would not deprive Government of that power. It would, therefore, be competent for Government still to exercise the power under section 65 notwithstanding such delegation. There would, therefore, be no legal objection to Government ordering the continuance of management of the land under section 65(1) after formally declaring the Collector's order as a nullity.

SA/-P.M.Lad

Additional Secretary to Govt.

U.R. to R.D.No. 16491, dated the 17th October 1951.

Office of the R.L.A.

Refund of local fund cess.

Bombay Tenancy & Agricultural Lands Act. 1948. Sections 11& 61(1).

Under section 11 of the Bombay Tenancy and Agricultural Lands Act. 1948. the local fund cess cannot be recovered from the tenants and the recovery of such cess from the tenants would be an offence under section 61(1) and the offence is also cognizable. The tenants who were parties to the decision of the Civil Judge cannot question that decision though it not correct, unless it altogether is set aside by a higher court. The decision it appears was given on 29-3-50 and it is not known whether any appeal has since been filed. If no appeal is filed, ~~the has since been filed. If no~~ the tenants who were parties to that decision would not be entitled to claim refunds of the cess from the Talukdar nor would it be possible for them to take any criminal action. But so far as the future levy of the cess is concerned, they can resist the claim, if any, made by the Talukdar .

So far as the tenants who were not parties to the decision of the Civil Judge, it would be competent for them to claim refund of the cess recovered from them and also to take criminal action if they so desire. As the management of the estate has been released, it is for the tenants to seek relief by filing suits against the Talukdar for the refund of the cess.

Sd/-J.R.Dharandhar.
2-11

Remembrancer of Legal Affairs.

U.O. to R.D.,No. 17254, dated the 2nd November 1951.

S.A.K.

27/1/ 4 copies

Office of the R.L.A.

Statement of the Case.

Sub-section (3) of Section 89 of the Bombay Tenancy and Agricultural Lands Act, 1948 provides that:

"Notwithstanding anything contained in sub-section (2) all proceedings for recovery or restoration of possession of the land under Section the Act (Bombay Tenancy Act, 1939) so repealed, pending at the date of the commencement of this Act before the Mamlatdar or in appeal before the Collector, shall, notwithstanding anything contained in this section, be deemed to have been instituted and pending before the Mamlatdar or in appeal before the Collector, as the case may be, under this Act and shall be disposed of in accordance with the provisions of this Act."

In the case of Semabhai Patil of Alva (Re. 57 of 1949) the Bombay Revenue Tribunal distinguished between applications under sub-section (1) of Section 7 of the repealed Act and those under sub-section (5) thereof and has held that applications under sub-section (5) only are contemplated by sub-section (3) of section 89 of the New Act. This was a case in which the landlord Semabhai Patil had made an application in revision to the Tribunal against the order of the Collector of Panch Mahals dated 22.1.1948 passed in Tenancy appeal No. 30 of 1948 reversing the order of the Tenancy Awal Karkun directing the protected tenant to deliver possession of the land bearing S.No. 707 of Alva to the landlord as the latter required the land for cultivating it personally and had for that purpose terminated the tenancy under the provisions of sub-section (1) of Section 7 of the repealed Act. In the concluding paragraph of its decision the Tribunal has observed as thus:

"The old and so also the new Act have conferred important and special benefits and privileges on

tenants generally. But the landlord has been left to his former remedy by a possessory suit under the Mamlatdars' Courts Act or in a Civil Court. Under clause (5) of section 7 only the tenant can apply to the Mamlatdar for possession and compensation. That is the kind of application that is contemplated by Section 89(3) of the New Act. The Tenancy Aval Karkun was consequently incompetent to take cognisance of the landlord's application for possession as rightly held by the Collector. This was therefore not a proceedings under Section 7 of the Old Act and accordingly the second condition necessary to give jurisdiction to the Tribunal under section 89(3) is also wanting."

2. In his opinion No. 4296, dated the 29th March 1950, the R.L.A. observed thus:

"So far as the proceedings under section 7(1) are concerned, the R.L.A. had consistently taken the view before the Bombay Tenancy and Agricultural Lands Act, 1948, came into operative that such applications would be entertainable either by the Mamlatdar underthe Mamlatdars' Courts Act, or the Civil court inasmuch as there was no express provision in the Act giving jurisdiction to the Tenancy Aval Karkun. However, after the Bombay Tenancy and Agricultural Lands Act, 1948, came into operation, it was difficult to maintain that view in view of the words 'all proceedings for recovery or restoration of possession of the land under section 7 of the Act as repealed' in section 89(3), particularly when the civil court's jurisdiction was ousted under section 85. If section 7(1) is to be construed as preserving the jurisdiction of the civil court or the Mamlatdar's court to entertain applications by landlords for possession after termination of tenancies, it would be difficult to construe section 85 which expressly bars the

jurisdiction of the civil court as well as of the Mamlatdar's court. If section 69(3) of the new Act is so construed, as has been done by the Bombay Revenue Tribunal, the landlords who have filed the applications before the Aval Karkuns for possession would be left without any remedy - a result which would not advance the purpose of the Act. It appears, therefore, that the view taken by the Bombay Revenue Tribunal is open to doubt and it is necessary that this point should be re argued thoroughly before the Revenue Tribunal in any similar matter."

In a subsequent case (No. C. 653 of 1950) this view was pressed before the Tribunal but it adhered to its earlier decision in Somabhai's case and has held that such proceedings can properly be entertained either by the Mamlatdar under the Mamlatdars' Court's Act or by Civil Courts. The result was that the Tenancy Aval Karkun or the Mamlat-dar or the Collector in appeal had no jurisdiction to entertain such proceedings. The Additional Secretary considered the effect of this decision and in his opinion No. 2614, dated 10-2-1951 observed that in view of this decision all such pending proceedings whether original or on appeal will have to be dismissed by the authorities concerned for want of jurisdiction and that it would be open to the landlords to start new proceedings under the Act of 1948.

Under Government Circular Revenue Department No. 5328/45, dated 17th March 1951 executive instructions on these lines have been communicated to the authorities concerned. After the circular was issued the Revenue Department considered that the instructions contained therein would not be proper

B.A.V.
27/7
4 copies

since in such matters revision application would lie to Government. The whole matter was again considered by the H.L.A. in his opinion No. 6296 dated the 18th April 1951 and it was stated that Government cannot have revised revisional jurisdiction in such matter and that the previous opinion need no reconsideration. The President of the Bombay Revenue Tribunal to whom the said instructions were shown has stated thus:

"I regret I am unable to agree with the view of the Remembrancer of Legal Affairs, expressed in his note, dated 18th April 1951. It is in my opinion wrong to suggest that the Mamlatdar or the Civil Court, who had jurisdiction to deal with the cases when they were instituted were divested of that jurisdiction of the operation of section 85 of the New Act. It is elementary that when a statute is passed while an action is pending, strong and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement of the action. In the absence of clear words to that effect, the statute cannot be construed as taking away the right of continuing the actions instituted under the old Act. Section 85 cannot be construed as having retrospective operation. In my opinion, the point might be clarified by necessary amendment in the New Act. But it will lead to unnecessary complexity and litigation if executive action, as indicated in the Press Report were taken. There will be unnecessary conflict of views between the Tribunal and the executive. Both the views may be fully stated for the opinion of the Advocate General before any final action is taken."

S.A.K.
27/7
4 copies

4. As there is difference of opinion between the Tribunal and the M.L.A. and Government desires that the matter be referred to the Advocate General. I have to request you to express your opinion in the matter.

A/- [illegible]

Secretary of State.

U.O. No. [illegible] dated the 14th May 1951.

S.A.F.
27/7
4 copies.

U.R. to A the Advocate General No. 7579

dated 14th May 1951.

O P I N I O N

I am of opinion that there is nothing in the words of section 89 of the Act of 1948 to justify any distinction between an application under sub-Section (1) of Section 7 of the Act of 1939 and an application under Sub-Section (v) of Section 7 of the Act of 1939. The words of Sub-section (iii) deal with all proceedings for the recovery of/or restoration of the possession of the lands under Section 7 of the Act of 1939. Sub-section (v) of the repealed Act seems clearly to be covered by the word "Restoration" in sub-section (iii) of section 89 of the Act of 1948. I am of opinion that whatever right the landlord had under the old Act, or has under the new Act, is to be enforced in the manner provided in Chapter VI of the new Act and the Rules made thereunder.

The word "Mamlatdar" has been defined under Sub-Section (x) of Section 1 and the definition is not exhaustive as the word used is 'includes'. The definition includes any Officer whom the Provincial Government may appoint to perform the duties of a

S.A.K.
27/7
4 copies

Manlatiar under the Act. The same definition also appeared in the Act of 1939. I am of opinion that Section 85 of the new Act deals with matters of procedure. As observed by Sir Salmond in his Jurisprudence, 10th edition, p. 366 746, a ri right to recover property is a question of substantive law, but in what courts andand within a what time proceedings must be instituted are questions of procedural law. Procedural law is, in the absence of clear words, always taken to be retrospecti See Maxwell, 9th edition, pp. 232. Attention is also drawn to a judgment reported in 21 Pomba, p. 822, where Chief Justice Farren and Justice Fulton held that if an appeal is filed at a time when under the law in force at the time no appeal lay but subsequently by amendment of the law, right of appeal was conferred, the Appellate Court had jurisdiction to decide the appeal. The observations of the learned Judges in that judgment support the view that if there was jurisdicti~~that judgment support the view that if there was jurisdiction~~ under the new Act with a particular Officer and the very officer had no jurisdiction under the old a Act , the Officer can deal with the pending proceedings under the new Act. Similarly, the appeals filed before the Tribunal can be decided by the Tribunal in any event, if they came on for hearing after the new Act came in operation.

Sd/-C.K.Daphtary.
9-Sept. 51.

S.A.K.
27/7

Office of the R.L.A.

A copy of the U.R. to the Advocate General, together with a copy of the opinion of the Soliciter General is forwarded to the Revenue Department.

Sd/-J.R.Dhurandhar.
19-9

Remembrancer of Legal Affairs.

U.R. to R.D.No. 15165, dated the 22nd September 1951.

S.A.K.
25-7
4 copies

Office of the R.L.A.

The first point raised by the Bombay Revenue Tribunal in this case is whether the transfer made by Krishnacharya in favour of the panchas of the Dyamavva's temple is valid under section 63 of the Bombay Tenancy & Agricultural Lands Act, 1948. The transfer has been made by a deed which is described as a deed of release or a relinquishment deed on 2nd March 1950. The transaction is in favour of the dity deity or idol. The panchas are directed to use the income of the land for the service of the deity. The transaction is not therefore a trust or gift, but is really a dedication in favour of the idol. Such dedication is not a transfer within the meaning i of the Transfer of Property Act, 1882, and would not be a sale, mortgage, lease, gift or exchange referred to in section 63 of the Bombay Tenancy & Agricultural Lands Act. ~~xx~~ An idol though a juridical person is not a living person in whose favour a transfer or trust can be made (Bhupatrao v. Shri Ramchandra Samsthan (1926) A.I.R. (Bag.) 469; Narsimha Swami v. Venkatlingam I.L.R. 50 Mad. 687). It is true that Chapter V of the Bombay Tenancy & Agricultural Lands Act does not provide that the words and expressions used in that Chapter shall be construed in the same sense as they occur in the Transfer of Property Act. But the absence of such a provision will not warrant any other interpretation to the words "sale, mortgage, gift" etc. used in section 63. They are transfers inter vivos and in view of the provisions of section 5 of the Transfer of Property Act must be in favour of living persons as defined in that section. The transaction in the present case in favour of the idol or temple will not be kind of transfer referred to in section 63 of the Bombay Tenancy &Agricultural Lands Act, 1948, and will not be invalid thereunder. The second question raised regarding "personal cultivation" does not therefore arise for decision.

Sd/-J.R.Dharandhar.
7-11
Remembrancer of Legal Affairs.

U.H. to R.D.No. 17933 dt. 7th Nov. 1951. R.A.V.I 28/7

Legal Department.

Bombay Tenancy and Agricultural Lands Act, 1948. Section 44.

Ankhadia Village.

The conditions specified in section 44 of the Bombay Tenancy and Agricultural Lands Act. 1949 not being satisfied it would not be feasible to assume management of the Estate under that provision. The view taken by the Revenue Department appears to be correct.

Sd/-P.M.Lad

: Additional Secretary to Government.

U.R. to R.D.No. 17510, dated the 9th November 1951.

S.A.K.
28-7
4 copies

Legal Department.
R.I.No. 23093 dt. 9-11-51.

Submitted.

2. The Collector of Belgaum in his letter dated the 11th October 1951 has raised the following two points for Govt's clarification:

(1) Whether under section 74A of the Bombay Tenancy and Agricultural Lands Act, 1948, it is competent for the Collector to withdraw appeals from the files of his Assistant or District Deputy Collector and hear such appeals himself as such power appears to be inherent with the transferring authority; and

(2) Whether since the provisions of section 74 according to which the Prant Officers could not receive and dispose of appeals has been allowed to continue as before, the Prant Officers cannot entertain appeals direct but have to hear and dispose of such appeals as are transferred to them by the Collector under section 74.

The R.D. considers that the Collector's view on both the points is wrong and that the view at (1) would not be acceptable unless section 74-A is suitably amended. Before however the Collector is informed accordingly the S.L.A. is requested to advise.

S.A.K.
25-7
4 copies

Office of the R.L.A.

Bom. Tenancy & A.L.Act, 1948.

Sections 7⅓ & 7⅓-A.

The view taken in the Revenue Department note at page 2 ante on both the points is correct.

Sd/-J.R.Dharendhar.
15-11

Remembrancer of Legal Affairs.

U.R. to R.D., No. 18159 , dated the 15th November 1951.

R.A.K.
28-7
4 copies

LEGAL DEPARTMENT.

Bombay Tenancy And Agricultural Lands Act, 1948- Section 2(16).

The expressions "Aval Karkun" and "Extra Aval Karkun" in Government Notification, Revenue Department No. 726/49, dated the 11th April 1951, would be only interpreted to mean all those who have been appointed and designated as such. Consequently Head Taluka Aval Karkun, the Treasury Aval Karkun and other Aval Karkuns would be covered by the expression "Aval Karkun" but not circle officers although they do the work of the Aval Karkun in non-tenancy matters. The view taken in the P.D. Officers note at page 45 ante is correct.

Sd/-P.M.Lad

Additional Secretary to Government.

U.R. to R.D.No. 18285, dated the 16th & November 1951.

S.A.K.
28-7
4 copies

Office of the R.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948. Sections 44 and 65(1).

R.L.A.'s opinion No. 10230 dt. 20-7-50 and No. 15997 dt. 5-10-51.

In the case underlying R.L.A.'s opinion No. 14446, dated the11th September 1951 the question for R.L.A.'s consideration was whether it was a fit case for Government to interfere with the order of the Collector in appeal under section 78 modifying the order of the Prant Officer rescinding the order of assumption of management of the land under section 65(1) after the Bombay Revenue Tribunal had rejected the Revision application. The R.L.A. advised in the negative and observed thus:

> "Having regard to the circumstances of this case namely the inability of the owner to cultivate the land owin to the death of his bullocks; illness of his son and his offer to pay the cost of reclamation to the lessee, it is not a fit case for Government to interfere. The enquities were all in favour of the owner. If the lessee desired to enforce his right to be on the land for the period of the lease, he may if so advised, go to the Court."

The Bombay Revenue Tribunal's decision as the law stands is final and binding on the parties and was cited not as expressing the correct law but as one of the factors in relation to the determination of the competence of Government to interfere with the order of the Collector. The R.L.A.'s view in the matter may be taken as the one expressed in R.L.A.'s opinion No. 10230 dated the 20th July 1950. and No. 15997, dated the 5th October 1951.

Sd/-J.R.Dharandhar,
17-11

Remembrancer of Legal Affairs.

U.O. to R.D., No. 18342, dated the 17th November 1951.

S.A.K.
28-7
4 copies

OFFICE OF THE J.L.A.

Bombay Tenancy and Agricultural Lands Act, 1948. Section 84.

Servant turning trespasser.

A servant on wages or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family has been specifically excluded from the definition of tenant under section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948. By the Nakarnama dated the 28th March 1949 Shri Keshav Bechar was engaged as a labourer to do agricultural operations for the year Samvat 2005-2006, under the personal supervision of Shri Kanji who is the owner of the land in question. Shri Keshav Bechar carried on the operations during the contracted period and appears to have assumed possession after that period unlawfully as against the tenant. There cannot, therefore, be any relationship of landlord and tenant between Shri Kanji Hirji and Keshav Bechar and the position of the latter would be that of a trespasser. It does not however appear that section 84, clause (c) which is the only relevant clause will have any application to the case, as it cannot be said that Shri Keshav Bechar is not entitled to the said land under the provisions of the Act.. Shri Kanji Hirji a will have to be left to have recourse to the Civil Court or the Mamlatdar's Court.

Sd/- R.R.Dhurand
22-11

Remembrancer of Legal Affairs.

U.O. to R.D.No. 18743, dated the 22nd November 1951.

S.A.K.
25-7
4 copies

Office of the E.L.A.

Bom. Tenancy & Agricultural Lands Act. 1948. Section 23.

Meaning of the term "bund".

The question for E.L.A.'s consideration is as to what meaning should be ascribed to the term "bund" appearing in section 23 of the Bombay Tenancy and Agricultural Lands Act, 1948. The Revenue Department considers that the term "bund" is a regional term corresponding to "embankment" in English and this Act being in Pari-materia with the Bombay Khar Lands Act, 1948 the meaning ascribed to the term "embankment" in section 2(c) thereof would apply to the term "bund".

2. The term "bund" has not been defined either in the Bombay Tenancy & Agricultural Lands Act, 1948 or the Land Revenue Code. In Wilson's Glossary Edited by Ganguly and Rasu (page 90) it has been thus defined: " a dam, a dyke., a causeway, a raised bank or mound of earth so constructed to confine the waters of a river or reservoir; or to produce a roadway across plains inundated in the rainy season." The words "bunds protecting any land held by a tenant" appearing in section 23 would therefore have to be construed as all these raised bunds or mounds of earth constructed or naturally existing in or around the land held by the tenant as a protection to the land against inundation by floods, rain water etc. and that . It would not be proper to import into this term the definition of the term "embankment" as given in section 2(c) of the Bombay Khar Lands Act, 1948 which is a term of wider connoration and includes even buildings intended for inspection and supervision of the embankment.

Sd/- J.R.Dhurandhar.
21-11

Remembrancer of Legal Affairs.

U.O. to R.D.No. 18525, dated the 21st November 1951.
B.A.K./23/7

Legal Department.

Bombay Tenancy & Agricultural Lands Act, 1948 Section 49 Bhachar Estate- Management of -

The management of the Bhachar Estate was assumed under section 49 of the Bombay Tenancy and Agricultural Lands Act, 1948, and the District Deputy Collector Tharad Prant, has been appointed the Manager of the Estate. The estate at the time vested in Bai Laduba the wife of the Thakore to whom it was made over for her maintenance and she was managing it. In compliance with the notice issued under section 49 by the Manager one Shri Parikh Bhotalal Bhukhabhai submitted his claim for Rs. 5. 250/- or in the alternative for 21 Kalsi of Bajri. The facts leading to the claim as stated by him were that on 22-7-1943 he had purchased 21 Kalsi of Bajri from Bai Laduba. the wife of the Thakore Saheb of Bhachar and had paid Rs. 2500/-. It appears the Bajri contracted to be sold was to be delivered after the necessary permit in respect thereof was obtained by the Thakore. For some reason or other the permit was not obtained and the Bajri was not delivered till 30-4-1948 when it was refused. Thereafter it appears Shri Parikh debited to the account of the landholder a sum of Rs. 5.250/- being the price of the Bajri at the rate then prevailing. The Manager, who investigated the claim found that a sum of Rs. 2,500/- was paid to the landholder, but rejected the claim on the ground that it was a private transaction between the applicant and Bai Laduba and has directed the application to a Civil Court (vide his order dated 5.1. 1951). Being aggrieved by this order Shri Parikh has approached Government for the necessary relief. The Revenue Department considers that the words "persons having claims against the estate." in section 49 would mean claims against the Estate Holder, that the claim in question would be a claim against the estate and that in view of section 21 of the Bombay General

Clauses Act, 1904, it would be competent for the manager to revise his order dated 5-1-1951 and admit the claim. The E.L.A. is requested to advise.

2. The expression "claims against the estate" in section 49 of the Bombay Tenancy and Agricultural Lands Act, 1948, does not mean only claims charged on the estate. It will include also personal claims against the estate holder which, in default of payment, can be enforced against his estate. In this connection attention is invited to section 46(1) which says:

"On the publication of the notification under section 44. .....

(1) All proceedings then pending in any Civil Court in respect to the debts and liabilities enforceable against the estate shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended."

It is therefore clear that any claim arising even from a breach of contract by an estate holder must be entertained by the Manager appointed for the estate. The order made by the Deputy Collector in this case is therefore, not correct, and it would be open to him to revise his order in view of section 21 of the Bombay General Clause Act, 1904. The view taken by the Revenue Department is correct.

Sd/-P.M.Lad

Additional Secretary to Government.

U.R. to R.D.No. 18797, dated the 23rd November 1951.

S.A.K.
28/7
4 copies

Legal Department.

23683
20-1-51

Submitted.

2. Under G.H.R.D.No. 1240/49.F. dated the 7th September 1949 Government has assumed management of the Estate of Shri R.R.Hadagonda comprising the inam villages of Jalgeri and Yargop in the Badami Taluka. However from the papers it appears that the inamdar was reluctant to assign any area for grazing of the village cattle free of charge and with a view to so provide free grazing lands from the forest areas of the Estate the management has been assumed . In G.H.R.D.No. 3531/49.F . dated 8-6-1951 Government has directed that forest lands which have been taken over along with agricultural lands under section 44 of the Act should be released from the management. The Inamdar has now filed a Civil Application being No. 730 of 1951 in the High Court , Bombay challenging the assumptionof management of various grounds mentioned in the plaint at slip 'B' (in file Civ Ai. /51-Part II).

In para 12 of the Plaint filed by theximdar Inamdar in Civil Application No. 730 of 1951 in the High Court, Bombay the assumptionof management of the forest areas has been challenged as being outside the scope of section 44 of the Act, and the proceedin s are pending in the High Court.

The question for consideration is whether in view of the proceedings filed by the Inamdar which are pending in the High Court the forest areas which forms the subject matter of the proceedings mak should be released from management.

S.A.K.
28-7
4 copies

Office of the H.L.A.

Bombay Tenancy and Agricultural Lands Act. 1948.

Section. 44.

In absence of any injunction or prohibitory order of the High Court there would be no legal objection to the release of the forest areas from management in accordance with the orders contained in G.M., R.D.No. 3533/49. P. dated the 8th August 1951. as proposed by the R.D. However since the management was assumed mainly for providing free grazing lands to the village cattle out of the forest areas of the Estate, the R.D. may also consider whether the assumption of other lands as may at all continue. especially in view of the fact that the assumption has been challenged on the ground that there were no disputes between the Inamdar and his tenants.

Sd/-J.R.Dhurandhar.
27/11

Remembrancer of Legal Affairs.

U.O. to R.D.No. 18996. dated the 27th November 1951.

S.A.K.
28/7
4 copies

Office of the R.L.A.

Bombay Tenancy Act. 1939 Sec. 25.

The question for consideration is as to the form in which the orders of Government passed under section 25 of the Bombay Tenancy Act. 1939 should be drawn and communicated to the parties.

In the absence of any provision in the Act itself or the rules and thereunder on the lines of the provisions of Order XX in the First Schedule to the Code of Civil Procedure the orders of Government under section 25 of the Bombay Tenancy Act, need not contain either a concise statement of the c se or the points for determination and the reasons for the decision thereon. It need not be in any special form. It is quite sufficient if the decision of Government on the point at issue is only knowingly communicated to the parties It may be noted that in England the administrative tribunals also follow a similar procedure. "These decisions are usually given in an abbreviated form and the reasons are seldom disclosed." (See Justice and Administrative Law By Robson: p. 574).

Sd/-J.K.Dhurandhar.
30-11

Remembrancer of Legal Affairs:

U.O. to H.D.No. 19291. dated the 1st December 1951

S.A.K.
23/7
4 copies

LEGAL DEPARTMENT.

Bombay Tenancy and Agricultural Lands Act 1948.

Sections 6(2) and 47(1).

The L.D. view that under section 6(2) of the Bombay Tenancy & Agricultural Lands Act, 1948, it is not competent for Government to fix a lowerrate of the maximum rent with retrospective effect is correct.

2. Under section 47(1) of the Act the manager during the management of an estate has all the powers which the holder thereof might as such have exercised and shall receive and recover all rents and profits due in respect of the property under management. This power includes the power to remit rents due from tenants; but since the position of the manager of an estate assumed under section 44 is in the nature of a trustee, it would not be competent for him to remitthe rent unless he is so empowered by any statutory provision or there are circumstances which will justify such remission (see R.L.A.'s No. 735, dated 17.1.50). The question is therefore one entirely of fact depending on the existence or otherwise of circumstances which might have induced the landholder to remit part of the rents due in the interest of the estate had the estate not been taken under management. That is a question of fact, which the Manager as an ordinary man of prudence will have to decide for himself having regard to all the circumstances in the present case.

Sd/-P.K.Lad

Additional Secretary to Government.

U.O.No. R.D.No. 19277, dated the 30th November 1951.

P.A.K.
28/7
5 copies.

Legal Department.

S.I.No. 21544 dt. 15-11-51.

Submitted with reference to R.D. Office Note on p. 21 ante.

3. These proceedings arise out of a vahiwati suit filed by Shri M.G.Vani in the Court of the Mamlatdar of Shahada, West Khandesh for eviction of his tenant Shri S. Patel. Shri Patel held the land under a registered lease dated 29-6-1942 for a period of ten years, condition 7 of which provides that on a three months' written notice to the effect that the landlord wants to cultivate the land personally the tenant shall peacefully deliver possession. The Mamlatdar after discussing the issues under section 19(1)(b) of the Mamlatdars' Courts Act, 1906 decided that the tenants' rights had not determined as the need for personal cultivation of the landlord was not genuine. The landlord appealed to the Collector against this order and the Collector by his order dated 26th April 1950 set aside the order of the Mamlatdar and directed restoration of possession to the landlord. The unsuccessful tenant thereafter approached the B.R.T. in revision but the Tribunal has rejected the application following its earlier decision in order No. G. 653 of 1950 (Shri Lallubhai Patel's Case).

The unsuccessful tenant has now approached Government for revision of the Collector's an order dated 26th April 1950. The R.D. considers that since the proceedings were under the Mamlatdars' Courts Act, Government cannot interfere with the order of the Collector. The M.L.A. is requested to advise.

R.A.K.
28/7
4 copies

Office of the R.L.A.

Bombay Tenancy Act, 1939
Section 28.
Vahivati Suit.

The view taken by the Revenue Department is correct. (See R.L.A.'s opinion No. 151 dated the 3rd January 1951 read with R.L.A.'s opinion No. 6346, dated the 20th April 1951).

Sd/-J.B.Dhurandhar.
3-12

Remembrancer of Legal Affairs.

U.R. to R.D.No. 19362, dated the 3rd December 1951.

B.A.K.
28/1
4 copies

Legal Department.

Submitted with reference to R.D.Office note on p. 177 ante.

2. Please see Addl. Secretary's opinions No. 2526, dated the 5th February 1951 and No. 3057 dated the 19th February 1951. Government has accepted the view expressed in these opinions and in Government Circular R.D.No. 3496/45-III dated the 22nd March 1951 this view has been circulated to Revenue Officers.

In the latter opinion the Addl. Secretary this observed:

"The Mamlatdar acting under the Bombay Tenancy and Agricultural Lands Act, is not an revenue Court within the meaning of section 20 of the Court Fees Act, 1870, & and consequently the rules framed by the High Court under that section would have no application for recovery of process fees in tenancy proceedings. The Act will have to be suitably amended if process fees are to be so collected."

In his note dated the 10th March 1951, the D.S., R.D. has stated thus:

"Under section 72 of the Bombay Tenancy and Agricultural Lands Act, 1948 , the Mamlatdar exercise the same powers as the Mamlatdar's Court under the Mamlatdars' Courts Act, 1906 which means he exercises power of recording evidence also and as such the Mamlatdar's sitting in judgment in a case under the Tenancy Act is a Revenue Court and consequently governed by the provisions of section 20 of the Indian Court-fe s Act and process amnd fees are leviable."

The R.L.A. is requested to advise whether the this view is correct and if so legislation is not necessary.

S.A.K.
28/7
4 copies

Office of the R.L.A.

Bombay Tenancy & Agricultural Lands Act 1948 Section 72.

Additional Secretary's Opinions No. 2026, dated the 9th February, 1951 and No. 3057, dated the 9th ~~Marx~~February, 1951.

The view taken by the Deputy Secretary, Revenue Department, in his note dated the 10th March 1951, is not correct. The very fact that the Mamlatdar acting under the Bombay Tenancy and Agricultural Lands Act, 1948, has to be invested with powers of a Mamlatdar's Court under the Mamlatdars' Courts Act, 1906, shows that he does not constitute a court. (See Peoples ~~sun~~ Provident and General Insurance v. Gurucharya 47, B.L.R. 852). There is no reason to reconsider the view taken in Additional Secretary's opinions No. 2026, dated the 9th February 1951 and No. 3057, dated the 9th February 1951.

Sd/-J.B.Thurendhar.
4th/12

Remembrancer of Legal Affairs.

U.O. to R.D.No. 19459, dated the 4th December 1951.

mxxt.
S.A.K.
28/7
4 copies

21508
13-11-57

Legal Department.

Submitted with reference to R.D. Office note on page 39 ante.

2. It appears that S.Nos. 210 and 115 of Laxmeshwar and S.No. 42 of Tenkankeri in the Sukela Taluka were sold by auction on 15th June 1950 in execution of the award in favour of the Ankola Urban Co-operative Credit Bank Ltd. Ankola and the auction was concluded in favour of one Shri Narayan Appa Naykar a non-agriculturist. The debtor Shri Vasudeo Ramkrishna Bhat whose lands were sold took an objection to the auctioneer the ground that the highest bidder was a non-agriculturist and as such the sale was invalid under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 and requested the Prant Officer, K.D.Yamara. not to sanction the sale. By a his order, Officer set aside the sale as the previous permission required under rule 25 of the Rules made under the Act had not been obtained by the auction purchaser. The Bank therefore made representation to the Collector but the Collector has refused to interfere. Now the Bank has approached Government to treat it as a special case as the the debt underlying the award is 20 years old and that if resale is ordered the Bank is likely to lose in view of the subsequent mortgage of the same land in favour of others and that no agriculturist is likely to offer bids. The R.D. considers that the case would not be covered by section 64-A of the Act. P.S. (Shri Prabhu) holds a similar view. The R.J.A. is requested to advise and suggest a way out to safeguard the interest of the Bassek Bank vis-a-vis. the debtor under the award.

S.A.K./ 28/7

Office of the R.D.A.

Bombay Tenancy & Agricultural Lands Act. 1948 - Sections 63 & 64A.

The prohibition of sale in favour of a non-agriculturist imposed under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 has now been relaxed by section 64A which provides that "nothing in section 63 shall apply to sales effected by or in favour of a Co-operative Society under the Bombay Co-operative Societies Act, 1925". There is however nothing in this section which would seem to suggest that it is intended to apply retrospectively, that is, to cases of sales effected prior to 30th March 1951 on which date the provision came into force. Section 64A would therefore apply only prospectively. The view taken by the Revenue Department and P.S. (Shir Prabju)is correct. The sale in favour of the Ankola Urban Co-operative Credit Bank Ltd. effected on 15-6-1950 would not therefore be covered by section 64A. On that date the sale in favour of a non-agriculturist could only be effected after the previous permission as required under rule 25 of the Bombay Tenancy and Agricultural Lands Rules, 1949 was obtained by the non-agriculturist auction bidder. In absence of such permission the sale was invalid and the Prant Officer has rightly set it aside. There is no remedy short of legislation to validate such sales.

2. The Bank's fear is that in case of a resale there may not be any bidder at all and that the Bank is likely to lose. In view of the provisions of section 64A in the Bombay Tenancy and Agricultural Lands Act, 1948, if a resale is held, non-agriculturists can bid. In the alternative the question of transferring the property in question to the Bank in accordance with section 59-A of the Bombay Co-operative Societies Act, 1925, should as suggested by the Collector, be considered.

Sd/-J.R.Dharmadhar.
5-12
Remembrancer of Legal Affairs.

U.O. to R.D.No. 19533, dated the 5th December, 1951

S.A.K.

Office of the R.L.A.

There is no objection to the assumption of management of the land under section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948. The view taken by the Revenue Department is correct.

Sd/-J.R.Dhurandhara
8-12

Remembrancer of Legal Affairs.

U.O. to R.D., No. 19797, dated the 10th December 1951.

S.A.K.
30-7
4 copies

B.I.Te. 22547 dt. 6-11-51.

Submitted.

2. Shri Somabhai Manabhai and hundreds of others who are tenants of the Metral Estate (till recently a talukdari estate) have made an application to H.E. , S.D. for allowing their request to purchase the lands held by them under sec. 32 of the Bombay Tenancy and Agricultural Lands Act. 1948. The Collr. of Panch Mahals in his report dated the 3rd October 1951 has stated that consequent upon the application of the Bombay Talukdari Tenure Abolition Act, 1949 the names of the cultivators of the Estate except those as have acquired the tenancies during their life-time have been ordered to be entered as permanent tenant under G.Rs. No. 9398/45 dated the 7th February 1951 and 29th June 1951. and even if the Act which has been challenged before the High Court is held to be valid the cultivators would get the status of permanent tenants and the provisions of section 32 of the Bombay Tenancy and A.L.Act will have no application. On this case the U.S., R.D. has observed thus:

"The provisions of section 32 of the Bombay Tenancy and Agricultural Lands Act will not be applicable to these cultivators whose names have been entered as permanent tenants according to the orders issued in G.O. No. 9398/45, dated 7-2-51 in as much as in that case permanent tenants are as good as holders and their names appears in the Record of Rights below the line. The Collr.'s view seems to be correct."

The E.L.A. is requested to advise.

B.A.K.
30-7

4 copies

Office of the R.L.A.

Bombay Tenancy & Agricultural Lands Act, 1948. Section 32.

The view taken by Revenue Department is correct. The right given under section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948, can be exercise by a protected tenant i.e. a tenant who can be deemed to be a protected tenant under section 31 of the Act. The said right cannot be claimed by a person who claims to be a permanent tenant. If the applicants desire to give up their right as permanent tenants and to claim the right of a protected tenant, it will be open to them to do so. The action of the Revenue Authorities though taken under the orders of Government in Circular No. 9398/45, dated the 7th February 1951 in entering them as permanent tenants in the Record of Rights or other necessary record will not prevent them from showing that they are not permanent tenants but protected tenants within the meaning of section 31. An entry in the Revenue khap records cannot be conclusive. Even an entry in the Record of Rights will have merely presumptive force and can be disputed. Each case will, however, be decided on its own facts.

Sd/-J.R.Dhuraidhar.
10-12

Remembrancer of Legal Affairs.

U.O. to L.D.No. 19873, dated the 11th December 1951.

S.A.K.
30-7
5 4 copies

There can be no doubt that the Bilimora Municipality which is a body corporate is a person within the meaning of section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (see section 3(35) of the Bombay General Clauses Act, 1904). However under section 114(3) of the Bombay Gujarat Municipal Boroughs Act, 1925 , read with section 63(1) of the municipality has power to purchase land by private negotiation for purposes of road widening; and under section 63 of the Bombay Tenancy and Agricultural Lands Act the sale of an agricultural lands to a non-agriculturist is prohibited and apparently the municipality being a non-agriculturist would be prohibited from purchasing the land under section 63 . It follows, therefore, that a conflict arises between section 63 of the Bombay Tenancy and Agricultural Lands Act and section 114(2) of the Bombay Municipal Boroughs Act. the question for consideration would, therefore, be which of the two Acts would prevail. "The general maxim is 'Generalia specialibus non derogant.' When the Legislature has again given its attention to a sp separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Such enactment must be construed in that respect according to its own subject-matter and its own terms." (see observations of Lord Mebhouse in Baker v. Edgar, 1898 A.C. 743 at p. 754). Section 63(1)(a) of the Bombay Tenancy and Agricultural Lands Act makes it clear that the sale of an agricultural land to a non-agriculturist prohibited under under that section includes sales in execution of a decree of a civil court or for the recovery of arrears of lands revenue or for sums recoverable as arrears of land revenue. Further, section 64A makes an exception in the case of sales effected by or in favour of a co-operative society under the Bombay Co-operative Societies Act, 1925. It appears, therefore that, though sale of an agricultural lands to a non-agriculturist was

permissible under the Bombay Land Revenue Code or under the Bombay Co-operative Societies Act, the Legislature thought it fit to make a special provision in respect of these sales. It, therefore, follows that the attention of the Legislature was drawn to certain kinds of ~~x~~ sales under the enactments and, if the Legislature thought it fit to provide exemption even in respect of a sale of an agricultural ~~x~~ land to a local authority such as a municipality, it would certainly have made a provision. The fact that it made no provision would indicate that the power given to the municipality to purchase an agricultural land by ~~xrtxix~~ private negotiation would not be permissible under section 63 unless the Collector could give sanction thereto under Rule 25 framed under the proviso to section 63(1). It appears, therefore, that it is necessary for the municipality to take the permission of the Collector for purchasing the agricultural land under Rule 25.

Sd/-J.B.Khurandhar.
11-12

Remembrancer of Legal Affairs.

U.D. to R.D. No. 15698, dated the 11th December 1951.

S.A.K.
30-7
4 copies

Legal Department.25

25048

5-12-51

Submitted with reference to R.D. note on pages 21-22 ante.

2. The agricultural estate comprised in the p Parnali village in the Palghar Taluka, which is a personal inam of Class II, has been under Govt. management under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948 since 31st October 1949. On 15-11-1951 it appears the cultivators of the Estate entered into an agreement of sale with the estate holder for the sale of the inam village to them for Rs. ~~1,75,000~~ 1,75,000 and have also paid Rs. 12,500 as earnest money. They have now requested the manager of the Estate to grant sanction to the sale of the village in their favour. The Collector of Thana considers that in view of section 46 the holder cannot negotiate for sale and has for that reason proposed withdrawal of the management. The R.D. considers that it is competent for the manager to negotiate the sale during the continuance of the management and if necessary to make the holder a party thereto. The R.L.A. is requested to advise.

S.A.K.
30-7
4 copies

Office of the E.I.A.

Bom. Tenancy & Agricultural Lands Act 1948.
Sections 44, 46(3) 47
Parnali Village.

Sale during Government Management.

It is true that under section 46(3) of the Bombay Tenancy Agricultural Lands Act, 1948, the holder of the estate is incompetent to enter into any contract regarding the sale of the estate and, under section 47(1) the Manager shall during the management of the estate have all the powers which the holder thereof might as such have exercised, which powers would include the powers to sell. (See also section 56). But the position of the Manager during the management is that of a trustee and a trustee cannot sell the trust property except for a legal necessity. In the present case, therefore does not appear to be any such - legal necessity for the sale of the estate. Consequently, if the Manager sells the estate for a consideration of Rs. 1,75,000/- though agreed to by the holder of the estate - is likely to be challenged latter on & in Court of Law. The consent of the holder would not validate an invalid transaction; for, the holder is incompetent to enter into any contract relating to the alienation of the property. (See section 46(3)). Consequently, the proposal of the Revenue Department that the Manager will be competent to enter into negotiations for the sale of the estate to the tenants and, if necessary, the Inamdar can be made a party to the transaction, would not be legally feasible. If Government desires to allow the estate to be sold the proper course would be to withdraw from the management of the estate so that the holder of the estate and the tenants may if they so desire complete the transaction.

Sd/-J.R.Dharaadhar.
15. 12

Remembrancer of Legal Affairs.

U.O. to R.D.No. 20184, dated the 15th December 1951.

D.A.K.
30-7

Submitted.

The A.D. in its note at p. 31 ante holds that the Bombay Tenancy and Agricultural Lands Act, 1948 in its application to the territories of the former Baroda State will have to be read subject to the amendments it made therein by the Bombay Merged States (Laws) Act, 1950 and not subject to the amendments made under the Baroda State (Application of Laws) Order, 1949.

2. The object of amending the Bombay Tenancy and Agricultural Lands Acts in the manner shown in the Bombay Merged States (Laws) Act, 1950 was to have a uniform polity in respect of all the merged States (please see H.L.M.'s notes in the Bill file of Bom. IV of 1950).

Sd/-J.M.Dharamdhar,
26-11

S.A.E.
30-7
4 copies

Office of the .L.A.

The view taken by the Revenue Department is correct. Section 5 of the Bombay Merged States (Laws) Ordinance, 1949 is clear on the point. According to this section the Bombay Tenancy and Agricultural Lands Act, 1948 as applied to the Baroda State under the Baroda State (Application of Laws) Order, 1949 ceased to have effect from 1st January 1950 i.e. the date on which the said Act was extended to and brought into force in the areas of the Baroda State with the modifications shown in the third Schedule to the Extinct Ordinance.

Sd/-J.P.Dharandhar.
27-11

Remembrancer of Legal Affairs.

U.O. to R.D.No. 16993, dated the 27th November 1951.

R.A.R.
30-7
4 copies

Submitted with reference to R.D. office note at p. 141 ante.

2. The Collector of Surat has requested Govt. to clarify whether it is necessary to carry out crop cutting experiments as are required to be done under Govt. order No. 3578/45, dated the 28th January 1950 for the purposes rule 3 of the Bombay Tenancy and Agricultural Lands Rules in cases of the four talukas of Vyara, Songadh, Mangrol and Mahuwa in respect of which a lower rate of maximum rent equal to five times the assessment has been fixed under section 6(2) of the Act. The R.D' considers that although it is desirable to determine and publish the total yield ove for the purposes of lower maximum rent under section 6(2) it would not be necessary to determine and publish the total yield wherein the lower case at five times the assessment. The R.L.A. is requested to advise whether the R.D. view is correct.

S.A.K.
30-7
4 copies

Bombay Tenancy & Agr cultural Lands Act. 1948.
Section 6(1) & (2)
Bombay Tenancy & Agricultural Lands Rules.
Rule 3.

Office of the R.L.A.

Sub-section (1) of section 6 of the Bombay Tenancy and Agricultural Lands Act provides that the maximum rent payable by the tenant for the lease of any lands shall not in case of an irrigated land exceed one third of the crop of such land or land exceed one third of the crop of such land or its value determined in the prescribed manner. "Prescribed" means prescribed by rules made under this Act. (section 2(12)). In Rule 3 of the Bombay Tenancy and Agricultural Lands Rules. 1949 made in this behalf ~~if~~ the procedure for determination of the quality and value of the crop has been prescribed. This procedure has to be followed only for determining the value of the crop for the purposes of the maximum rent payable by the tenants under section 6(1). Sub-section (2) of section 6 does not require that any prescribed procedure should be followed for calculating or arriving at the lower rate of maximum rent to be fixed by Government thereunder. It is not therefore legally necessary to follow any specified procedure in this behalf. But from administrative point of view the procedure prescribed in rule 3 may be followed for the purpose of section 6(2) of the Act.

Sd/-J.R.Dharandhar.
29-12

Remembrancer of Legal Affairs.

U.O. to R.D.No. 20667, dated the 28th December 1951.

3017K.
4 copies

Office of the R.L.A.

Bombay Tenancy & Agricultural Lands Act, 1948. Sec. 14(1) Additional Secretary's Opinion No. 9307 d/- 13-6-51.

In Additional Secretary's opinion No. 9307 , dated the 13th June 1951 it has been thus observed.

" It appears that the landlord will have to give a notice under clause (h) for terminating the lease to a tenant who has not paid the rent by the date provided for the section 14(1)(a)(i) of the Bombay Tenancy and Agricultural Lands Act. Notice will be necessary under clause (g) even if the lease provides an express condition that on failure to pay rent within time, the lessor can re-enter the land."

The question now referred to the R.L.A. for adviced is as to the time limits for giving such notice, and whether it should be oral or in writing. The Revenue Department considers that it would suffice, if the landlord before ejectment proceedings are filed does at any time some act shewing his intention to determine the lease and that such intention may be expressed orally or in writing. It appears the view taken by the Revenue Department is not wholly correct. The conditions specified in clauses (a) to (e) of section 14(1) of the Bombay Tenancy and Agricultural Lands Act, are statutory express conditions on breach of which the lease is liable to be terminated and re-entry affected by the landlord. This implies that the lease is determined by forfeiture. In such a case the provisions of clause (g) of section 111 of the Transfer of Property a Act would be attracted. Under this provision it is essential that the lessor gives notice in writing to the lessee of his intention to determine the lease. No question of notice under section 106 of the Act arises. Therefore all that would be necessary to terminate the lease under section 14(1) of the Bombay Tenancy and Agricultural Lands Act is that the landlord gives a notice in writing to the tenant specifying a his intention to determine the lease.

Sd/-J.R.Dhanandhar./ 24-12
Remembrancer of Legal Affairs.

Sd/- [illegible].
24-12

Remembrancer of Legal Affairs.

U.K. to H.D.No. 20569. dated the 27th December 1951.

S.A.K.
30-7
4 copies